

§ 536.206

5 CFR Ch. I (1–1–10 Edition)

(4) To determine whether an employee is exempt or nonexempt from the Fair Labor Standards Act of 1938, as amended.

§ 536.206 Determining an employee's rate of basic pay under grade retention.

(a) *General.* (1) When an employee becomes entitled to grade retention or becomes covered by one or more different pay schedules (because of a change in the employee's position of record, a change in the employee's official worksite, or the establishment of a new pay schedule) during a period of grade retention, the agency must apply the rules in this section to determine the employee's rate of basic pay.

(2) This section does not apply to an employee whose entitlement to grade retention is terminated under one of the conditions in § 536.208. (See § 536.208(d).)

(b) *Preexisting rate within a range.* If an employee is entitled to a rate of basic pay within the applicable rate range before the action resulting in application of this section, the employee is entitled to the rate(s) of basic pay in the applicable pay schedule(s) for the employee's position of record after the action (including the retained grade) which correspond to the employee's grade and step (or relative position in range for a GM employee) immediately before the action. The employee's payable rate is the corresponding rate in the highest applicable rate range for the employee's position of record after the action (including the retained grade). If an employee's rate of basic pay otherwise would be reduced because of placement under a lower-paying pay schedule (excluding any reduction that results from a geographic conversion), the employee would be eligible for pay retention under subpart C of this part to the same extent as other employees holding the same position of record whose actual grade is the same as the employee's retained grade.

(c) *Preexisting retained or saved rate.*

(1) If an employee is entitled to a retained rate immediately before the action resulting in application of this section, the agency must determine the employee's payable rate of basic pay under §§ 536.303 and 536.304.

(2) If an employee is entitled to a saved rate under 5 CFR 359.705, the agency must determine the employee's payable rate of basic pay under that section.

(d) *Order of processing pay actions.* When an action resulting in application of this section takes effect on the same effective date as other pay actions that affect an employee's rate of basic pay (e.g., within-grade increase), the actions will be processed in the order prescribed in the rules governing the covered pay system of the employee's position of record (e.g., 5 CFR 531.206 for GS positions and 5 CFR 532.413 for Federal Wage System positions).

[70 FR 31305, May 31, 2005, as amended at 73 FR 66155, Nov. 7, 2008]

§ 536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of an entitlement under § 536.201 ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in service of 1 workday or more;

(2) The employee is reduced in grade for personal cause or at the employee's request (based on the actual grade of the employee's position rather than the employee's retained grade and, when a movement to a different covered pay system is involved, a comparison of comparison rates under § 536.105);

(3) The employee moves to a position under a covered pay system with a grade that is equal to or higher than the retained grade (as determined under § 536.105), excluding a temporary promotion;

(4) The employee declines a reasonable offer of a position with a grade equal to or higher than the retained grade (as determined under §§ 536.104 and 536.105);

(5) The employee elects in writing to terminate the benefits of grade retention; or

(6) The employee moves to a position not under a covered pay system.

(b) Eligibility for grade retention as a result of entitlement under § 536.202